TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 175

GEORGE J. GEIO, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED DECEMBER 4, 1900.

(17,000)

(27,990)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 633.

GEORGE J. GHIO, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 3, 1920.

a In the United States District Court Within and for the Eastern Division of the Eastern Judicial District of Missouri.

No. 5295.

GEORGE J. GHIO, Plaintiff,

vs.

GEORGE H. MOORE, etc., Defendant.

TRANSCRIPT OF THE RECORD ON APPEAL.

1 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

Be it remembered that heretofore, towit, on the 26th day of October, A. D., 1920, there was filed in the office of the Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, in cause numbered 5295 of causes in said court, wherein George J. Ghio is Plaintiff, and George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, is defendant, a Præcipe for Transcript, which said Præcipe for Transcript, and the pleadings and proceedings called for therein, and in the order called for therein, are in words and figures as follows, towit:

2 (*Amended Bill in Equity.*)

To the Hon. Charles B. Faris, Judge of the United States District Court:

George J. Ghio, citizen and resident of the City of St. Louis, and State of Missouri, brings this amended bill of complaint against George H. Moore, citizen and resident of said City and State, and respectfully shows unto this Honorable Court, as follows:

That the full name of the complainant in this original bill of G. J. Ghio, filed in this court on the — day of ——, 1920, against the above named defendant, is George J. Ghio, and this amended bill is filed in said cause in the full name of said complainant; that the defendant is Collector of Internal Revenue, of the United States, for the First Internal Revenue District, of the State of Missouri, and as such is charged by law with the duty of collecting and receiving taxes due the United States, on distilled spirits, in Government Bonded Warehouses, in said District, and, upon payment of the taxes due on said spirits by the owners thereof, to issue internal revenue stamps showing the payment of the taxes due the United States on said spirits, and to release said spirits to the owners thereof; that the Government Bonded Warehouses in said District and the

distilled spirits on deposit therein and the keys to said Warehouses and the right of ingress and egress from and to the same are
3 now in the custody and control of defendant.

That complainant is the owner of a barrel of distilled spirits, hereinafter described, and that he became the owner thereof on or about the 28th day of February, 1920, by purchasing, for a valuable consideration, a warehouse receipt covering said spirits; that said spirits are now in possession of defendant and deposited in Government General Bonded Warehouse No. 1, of the United States, located at Boyle and Duncan Avenues, in said City and State, and in the First United States Internal Revenue District of said State; that said spirits are contained in a barrel, numbered 125215, and were produced by the Geo. T. Stagg Distilling Company, located in the County of Franklin, in the State of Kentucky; that complainant is unable to state the exact number of taxable gallons of spirits contained in said barrel; but believes the same to contain approximately Forty-eight (48) taxable gallons; that complainant has not tendered to the defendant the money due the United States as taxes on said spirits, because he is not informed or advised of the exact amount due thereon, and for the further reason that the defendant has announced that he will not accept the tax due on said spirits or issue to complainant revenue stamps showing the payment of said tax or release said spirits to complainant unless complainant first obtain from the United States a permit authorizing him to secure the release of said spirits from bond; that complainant desires to obtain possession of said spirits, his private property, and to transport the same to his private dwelling, in the City of St. Louis, which is occupied and used by complainant as his dwelling only; that he does not desire the possession of said spirits for the purposes or barter or sale, or of using or disposing of the same in violation of any law of the United States; that the Act of Congress of October 28, 1919, commonly known as the Volstead Act, expressly legalized the purchase of said spirits by complainant, and thereby the transportation of the same to his private dwelling; that defendant's refusal to release said spirits to complainant is wrongful and illegal and in violation of said Act of Congress, and also in violation of the Fifth Amend-
4 ment to the Constitution of the United States, in this, towit, complainant is deprived of his property without due process of law; the withholding of possession of said spirits from complainant is a taking of his private property for public use without just compensation.

Complainant further states that he is ready, willing and able to pay the tax due the United States on the aforesaid spirits, when the same are gauged by the United States gauger in charge of said Warehouse; that the announcement of the defendant of his intention and determination not to accept or receive payment by complainant of the tax due on said spirits, and his refusal to accept such payment, is wrongful and illegal and without authority of law.

Wherefore, complainant prays this Honorable Court to grant him a writ of subpœna directed to the defendant, commanding him to

appear and answer this complaint, and for a decree ordering and directing the defendant to receive the aforesaid tender and to issue to complainant internal revenue stamps showing the payment of the said tax, and to release said spirits to complainant, and for such other and further orders and decrees as to the Court shall seem just and equitable.

(Signed) ELLIOTT W. MAJOR,
(Signed) GLENDY B. ARNOLD,
Attorneys for Complainant.

STATE OF MISSOURI,
City of St. Louis, ss:

I, George J. Ghio, being duly sworn, depose and say that I am the complainant in the foregoing amended bill of complaint; that I have read the same and know the contents thereof; that in so far as the same are allegations of fact, they are true of my own knowlege.

(Signed) GEORGE J. GHIO.

Subscribed and sworn to before me this 6th day of October 1920. My Commission expires July 2, 1923.

[Notary Seal.] (Signed) OLIVER F. ERBS,
Notary Public.

(Endorsed: "Filed Oct. 7, 1920. W. W. Nall, Clerk.")

5 *(Motion to Dismiss Bill.)*

Now comes the Defendant in the above entitled action, and by leave of Court, moves to dismiss complainant's bill herein for the following reasons, to-wit:

First. The suit in effect is one against the United States and the bill does not aver or show that the United States has consented to be sued herein.

Second. The facts alleged in the bill are insufficient to constitute a valid cause of action in equity.

Third. The Court has no jurisdiction to grant the relief prayed for or any part thereof.

Fourth. The bill does not present a cause of action in equity under the Constitution of the United States.

Fifth. The bill does not disclose a cause of action equitable in its nature, civil in its character, and arising under the Constitution of the United States.

Sixth. The bill on its face shows that by the suit it is sought to obtain a decree of this Court without authority of law, commanding, ordering and directing defendant to receive from complainant the tax said to be due on certain distilled spirits mentioned in said bill

and to issue complainant internal revenue stamps showing the payment of said tax and to release said spirits to complainant.

Seventh. The Court judicially knows that the relief sought in and by said bill is forbidden and prohibited by law, and particularly by the Act of Congress known and designated as the "National
6 Prohibition Act", which is a valid and subsisting law.

Eighth. It appears from the bill that the complainant has a plain, adequate and complete remedy at law.

Wherefore the defendant says that he should not be held to answer to the bill or to the several allegations thereof above referred to, but that said bill should be dismissed with costs to the complainant.

(Signed) W. L. HENSLEY,
United States Attorney.
(Signed) BENJ. L. WHITE,
Assistant United States Attorney,
Solicitors for Defendants.

(Endorsed: "Filed Mar. 25, 1920. W. W. Nall, clerk." "Refiled Oct. 7, 1920. W. W. Nall, clerk.")

7 *Amended Bill of Complaint (and Record Entry Showing Filing of Motion to Dismiss, Motion Submitted to the Court, Final Decree).*

Now at this day comes said complainant by his solicitor, and, by leave of Court, files an amended bill of complaint in this cause; and comes also said defendant appearing by the United States Attorney for the Eastern District of Missouri and re-files his motion to dismiss herein, which motion is now submitted by counsel to the Court; upon due consideration whereof, and for the reasons stated in the opinion heretofore filed in this cause, the Court doth

Order that said motion be sustained and that the amended bill of complaint herein be and the same is hereby dismissed, for want of equity, at the costs of said complainant, for which costs let execution issue.

October 7th, 1920.
(Signed) C. B. FARIS,
Judge.

8 (*Petition for Appeal.*)

To the Hon. Charles B. Faris, Judge of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri:

The above named plaintiff, George J. Ghio, believing himself aggrieved by the decree made and entered in this cause on the 7th day of October, 1920, dismissing plaintiff's amended bill of complaint, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors

which is filed herewith, and plaintiff prays that his appeal may be allowed, and that citation issue as provided by law, and that a transcript of the record, upon which said decree was based, duly authenticated, may be sent to the United States Supreme Court.

(Signed) ELLIOTT W. MAJOR AND
G. B. ARNOLD,
Solicitors for Plaintiff.

Appeal granted as prayed.
(Signed) C. B. FARIS,
Judge.

(Endorsed: "Filed Oct. 26, 1920. W. W. Nall, clerk.")

9 (*Assignment of Errors.*)

Now comes the plaintiff in the above entitled cause and respectfully complains that the decree entered in said cause on the 7th day of October, 1920, is erroneous and prejudicial to plaintiff in the following particulars:

I.

The court erred in sustaining the defendant's motion to dismiss said amended bill and in entering a decree in dismissing said bill.

II.

Said decree deprives the plaintiff of the protection of the Fifth Amendment to the Constitution of the United States, in that it sanctions the taking of the plaintiff's private property without due process of law, and the taking of plaintiff's private property for a public use without any compensation.

III.

Said decree is neither supported nor sustained by the Eighteenth Amendment to the Constitution of the United States.

IV.

In rendering said decree, the Court erroneously held the Fifth and the Eighteenth Amendments to be in conflict.

10 V.

Under the allegations of plaintiff's amended bill he is entitled to a decree against the defendant compelling and directing the defendant to release to plaintiff the spirits described in said amended bill.

VI.

Said decree is in violation of the Act of Congress of October 28th, 1919, commonly known as the Volstead Act.

Wherefore, plaintiff prays that said decree be reversed; that the Supreme Court cause the proper decree to be entered directing the defendant to release to the plaintiff, without the requirement of a permit, the spirits described in plaintiff's amended bill, and for such other and further relief as the plaintiff may be entitled to receive.

(Signed) ELLIOTT W. MAJOR AND
G. B. ARNOLD,
Solicitors for Plaintiff.

(Endorsed: "Filed Oct. 26, 1920. W. W. Nall, clerk.")

11 The United States of America to George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein George J. Ghio is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Charles B. Faris, Judge of the District Court of the United States within and for the Eastern District of Missouri, this 26 day of October, in the year of our Lord one thousand nine hundred and twenty.

C. B. FARIS,
United States District Judge for the Eastern District of Missouri.

Service hereby acknowledged 10/26/20.
J. E. CARROLL,
U. S. Atty.

[Endorsed:] No. 5295. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. George J. Ghio, appellant, vs. George H. Moore, collector. Citation. Filed Oct. 26, 1920. W. W. Nall, clerk.

12 (*Appeal Bond.*)

Know all men by these presents that we, George J. Ghio as principal, and Southern Surety Company, as surety, are held and firmly bound unto George H. Moore, collector of internal revenue, United States for the First District of Missouri in the full and just sum of five hundred ($500.00) dollars to be paid to the said George H. Moore, collector of internal revenue, United States for the First District of Missouri, his successors or assigns: to which payment well and truly to be made, said Principal binds himself, his heirs, executors, and administrators, and said Surety binds itself, its successors or assigns jointly and severally by these presents. Sealed with our seals, and dated this 24th day of November, in the year of our Lord one thousand nine hundred and twenty.

Whereas, lately at the September term, A. D. 1920, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between George J. Ghio, plaintiff and George H. Moore, collector of internal revenue of the United States for the First District of Missouri, defendant, was rendered against the said Complainant and the said Complainant has obtained an Appeal *of* the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Defendant citing and admonishing him to be and appear at the Supreme Court of the United States, at the City of Washington, thirty days from and after the date of said Citation.

Now the condition of the above obligation is such, that if the said Complainant (Appellant) shall prosecute said Appeal to effect, and answer all damages and costs if he fail to make good his said plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

GEORGE J. GHIO. [SEAL.]
[Corporate Seal.] SOUTHERN SURETY COMPANY, [SEAL.]
By H. H. BUTLER, [SEAL.]
Attorney in Fact.

Approved by

(Signed) C. B. FARIS,
Judge.

(Endorsed: "Filed Nov. 24, 1920. W. W. Nall, clerk.")

[Endorsed:] No. —. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. George J. Ghio vs. Geo. H. Moore, collector of internal revenue, 1st District. Bond. Copy. $500.00.

13 (*Præcipe for Transcript.*)

To the clerk:

You will please prepare and duly authenticate a typewritten transcript of the record in the above entitled cause for an appeal to the Supreme Court of the United States, excluding the formal and immaterial parts of the pleadings, documents and other papers, in accordance with Equity Rule 76, to wit:

First. The amended bill of complaint and the order permitting the filing of the same.

Second. Motion of defendant to dismiss and entry showing the filing of the same.

Third. Record showing submission of motion to dismiss for the decision of the Court.

Fourth. Final decree.

Fifth. Petition for allowance of appeal.

Sixth. Assignment of errors.

Seventh. Order allowing appeal.

Eighth. Citation issued on the appeal showing acknowledgment of service thereon.

14 Ninth. Copy of Appeal Bond.

Tenth. This præcipe.

(Signed) ELLIOTT W. MAJOR AND
G. B. ARNOLD.

(Endorsed: "Filed Oct. 26, 1920. W. W. Nall, clerk.")

15 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, W. W. Nall, Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a true and complete copy of the record (save and except as restricted by the Præcipe for Transcript, heretofore set out) in cause numbered 5295 of causes in said Court, wherein George J. Ghio is plaintiff, and George H. Moore, Collector of Internal Revenue of the United States for the First District of Missouri, is defendant, in the order called for in the Præcipe for Transcript, as fully as the same remains on file and of record in my office; that the Original Citation is hereto attached and herewith returned.

In witness whereof I hereunto subscribe my name and affix the seal of said Court, at office in the City of St. Louis, State of Missouri, in said Division of said District, this 24th day of November, A. D. 1920.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL,
Clerk of said Court,
By ADAM H. JONES,
Deputy Clerk.

Endorsed on cover: File No. 27,990. E. Missouri D. C. U. S. Term No. 633. George J. Ghio, appellant, vs. George H. Moore, collector of internal revenue. Filed December 2d, 1920. File No. 27,990.

(2695)